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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/637,888	08/07/2003	Darwin Garton	34084	2486

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EXAMINER

MORRISON, NASCHICA SANDERS

ART UNIT PAPER NUMBER

3632

DATE MAILED: 09/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/637,888

Applicant(s)

GARTON, DARWIN

Examiner

Naschica S Morrison

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 07 August 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 August 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

This is the first Office Action for serial number 10/637,888, Industrial Tank Support, filed on August 7, 2003. Claims 1-23 are pending.

#### ***Specification***

The disclosure is objected to because of the following informalities: on page 2, line 13 insert --recess- after "with a"; on page 5, line 23 "firsts" should be --first--; on page 7, line 20 reference numeral 72 does not indicate a stirrer in Figure 1 as specified. Appropriate correction is required.

#### ***Drawings***

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: 74, 76, 78.

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: 68 and 70 on page 7.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR

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1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Claim Objections***

Claim 4 is objected to because of the following informalities: on line 2, "include" should be --includes-- and insert --tank-- after "respective". Appropriate correction is required.

Claim 7 is objected to because of the following informalities: on line 2 insert --tank-- after "second". Appropriate correction is required.

Claim 8 is objected to because of the following informalities: on line 1 insert --tank-- after "second". Appropriate correction is required.

Claim 9 is objected to because of the following informalities: on lines 2 and 3, insert --tank-- after "second". Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 18 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 18 is rejected because it is unclear whether the combination of the support and the tank is being claimed or merely the subcombination of the support. Claim 18 recites the tank in a functional statement in the preamble of the respective claim, indicating the subcombination is being claimed, yet the applicant recites a further structural limitation to the tank/stirrer in claim 18 (line 1), indicating the combination is being claimed. For purposes of this Office action, the examiner will assume the **subcombination** is being claimed.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4, 6-9, 13-19 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 5,533,456 to Regina in view of U.S. Patent 5,520,121 to Schubart et al. (Schubart). With regards to claims 1, 2, 4, 6-9, 13, 14, 17, 18 (as best understood), 19, and 22 Regina discloses a unitary support comprising: at least four tubular legs (26) having a sidewall enclosing a cavity, a top end having an opening, and a bottom end (near 28 generally); a rectangular platform (3 generally; see Fig. 3) coupled to the legs between the top and bottom ends, the platform including an outer wall (21, 22, 23, 24) having substantially planar wall segments which are substantially tangent to the sidewalls of the legs; a platform wall (4, 5) enclosing a chamber (14, 15,

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18, 19), a central passage (at 6 in Fig. 10 generally) and having a first, flat, horizontal supporting surface (bottom surface - not shown in Fig. 10) and an opposite second supporting surface (top surface as shown in Fig. 10); each of the first and second supporting surfaces being bounded by a respective edge (21, 22, 23, 24) and being recessed relative to the surrounding edges; the platform being elevated above a supporting surface when the legs are resting on the supporting surface with either of the supporting surfaces above the other; wherein the legs (26) are spaced equidistant around the platform; wherein the support is stackable so as to support another support/stand (20) coupled to the legs (26) and is capable of having a stirrer mounted thereon; and wherein the platform includes portals (25 generally) extending through the platform and located adjacent respective legs and the platform further includes upright interior walls (at 6, at 8 generally) extending between the first and second surface and surrounding the portals. Regina does not disclose the first supporting surface being configured differently than the second supporting surface. Schubart teaches a support comprising a platform having a first supporting surface (at 20; Fig. 6) that is configured differently than a second, opposite, substantially frustum shaped supporting surface (34, 38), wherein the second supporting surface is sloped inwardly toward a center and includes an edge (38 generally) surrounding a recess with the supporting surface located interiorly of the edge. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the second supporting surface of Regina to be configured differently than the first supporting surface because one would have been motivated to provide a means for rigidly enclosing a container as

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taught by Smith (col. 4, lines 4-12). Regarding claims 3, 15, and 16, Regina does not teach the central passage being circular or the supporting including six legs and the platform being hexagonal; however it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the central passage to be of various shapes including circular and the platform to be of various shapes including hexagonal wherein the support includes six legs since it has been held that a change in the shape of a prior art device is a design consideration within the skill of the art. In re Dailey, 357 F.2d 669, 149 USPQ 47 (CCPA 1966).

Claims 5 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Regina in view of Schubart and further in view of U.S. Patent 5,490,603 to Davis. With regards to claims 5 and 10, Regina in view of Schubart discloses the support as applied above, but does not teach the support being formed of synthetic resin or the chamber of the platform being in fluidic communication with the legs. Davis teaches a support (14 generally) formed of synthetic resin and including a platform (40) in fluidic communication with support legs (44). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the support of Regina to be formed of synthetic resin, as taught by Davis, in order to provide a less expensive platform and further since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. Additionally, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the platform of Regina to be in fluidic communication with the legs because one would have

been motivated to provide a support which is simpler to manufacture/mold as inherently taught by Davis.

Claims 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Regina in view of Schubart and further in view of U.S. Patent 4,848,711 to Mandel. With regards to claims 11 and 12, Regina in view of Schubart discloses the support as applied above, but does not teach the legs having a transverse slot with a strap therein. Mandel teaches a support (Fig. 2) including a plurality of legs (10c generally) having a transverse slot (10d') with a strap (12) therein. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the legs of Regina to include a transverse slot and strap therein because one would have been motivated to provide a positive securing relationship between the legs of the support and the object located on the support as taught by Mandel (col. 2, lines 16-18).

Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Regina in view of Schubart and further in view of U.S. Patent 6,505,429 to Percival. With regards to claim 20, Regina in view of Schubart discloses the support as applied above, but does not teach the legs having a means removably mounted on a top end thereof. Percival teaches a support (10) including a plurality of legs (31) having a means (72) removably mounted on a top end thereof for covering an opening within the legs. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the legs of Regina to include removably mounted means (72) thereon because one would have been motivated to prevent debris from entering the top openings in the legs as taught by Percival (col. 4, lines 36-38).



Claims 21 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Regina in view of Schubart and further in view of U.S. Patent 5,746,405 to Dvorak et al. (Dvorak). With regards to claim 21, Regina in view of Schubart discloses the support as applied above, but does not teach the legs having hole for receiving a threaded fastener in the bottom ends thereof. Dvorak teaches a support (10) including a plurality of legs (60) having hole (adjacent 92 in fig. 8) in a bottom end thereof sized for receiving a threaded fastener (92). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the legs of Regina to include hole in the bottom ends thereof because one would have been motivated to provide a means for securing height-adjustable foot members so as to adapt the support to uneven floor surfaces as taught by Dvorak (col. 7, lines 58-61). Regarding claim 23, the method steps recited therein are deemed to be made obvious by the functions of the structure recited above and are inherent to the apparatus as applied.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

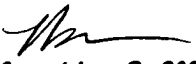
839062 to Gagnon; 2657891 to Van Haften et al; 2988333 to Mesic;  
3255927 to Rupert, Jr. et al; 3653184 and 3636888 to Angelbeck, Jr.;  
37009163 to Smedley et al; 3776435 to Smith; 5117402 to Myers et al;  
5197601 to Sterett; 6247594 to Garton;


The above references disclose supports relevant to the present invention.

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Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Naschica S. Morrison, whose telephone number is (703) 305-0228. If attempts to reach the examiner are unsuccessful, the examiner's supervisor, Leslie Braun can be reached at 703-308-2156. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Any inquiry of a general nature or relating to the status of this Application should be directed to the Technology Center receptionist at (703) 306-1113.

  
*Naschica S. Morrison*  
Patent Examiner  
Art Unit 3632  
8/30/04

  
RAMON O. RAMIREZ  
PRIMARY EXAMINER